

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

<p>App. Ser. No.: 10/820,338</p> <p>Appellant(s): Endler et al.</p> <p>Filing Date: April 7, 2004</p> <p>Title: Methods and Apparatuses for Displaying and Rating Content</p> <p>Examiner: Daniels, Anthony J.</p> <p>Art Unit: 2622</p> <p>Customer No.: 37123</p> <p>Confirm. No.: 8133</p>	<p>Certificate of Transmission/Mailing/Express Mailing:</p> <p>Facsimile Transmission number (571) 273-8300 or "Express Mail" mailing label number _____ if applicable.</p> <p>I hereby certify that this correspondence is being: [] facsimile transmitted to the USPTO, under 37 C.F.R. § 1.8, [] electronically transmitted via the USPTO electronic filing system, under 37 C.F.R. § 1.6(a)(4), [] deposited with the United States Postal Service with sufficient postage as first class mail in an envelope, under 37 CFR § 1.8, or [] deposited with the United States Postal Service as "Express Mail Post Office to Addressee" service, under 37 C.F.R. § 1.10, on the below indicated date and is addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.</p> <p>Typed/Printed Name of Person Transmitting, Mailing, or Express-Mailing Correspondence: <u>May Lin DeHaan</u></p> <p>Signature: <u>May Lin DeHaan</u></p> <p>Date of Deposit: <u>September 2, 2010</u></p>
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APPEAL BRIEF
UNDER 35 U.S.C. § 143(A), 37 C.F.R. § 41.37

To the Board:

This document is an Appeal Brief in support of the Notice of Appeal, filed on July 29, 2010, under 35 U.S.C. § 143(A) and 37 C.F.R. § 41.37.

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I. REAL PARTY IN INTEREST

The real parties in interest are the Assignees of the subject matter in the above-referenced patent application, Sony Corporation, a Japanese corporation, 1-7-1 Konan, Minato-ku, Tokyo, 108-0075 Japan, and Sony Electronics, Inc., a Delaware corporation, 1 Sony Drive, Park Ridge, New Jersey 07656.

II. RELATED APPEALS AND INTERFERENCES

On information and belief, no related appeals or interferences are pending.

III. STATUS OF CLAIMS

The present application has been originally filed with Claims 1-25 on April 7, 2004. An Amendment in a Response to a Non-Final Office Action has been filed on November 13, 2007, wherein Claims 1, 12, 15, 16, 19, 21, and 25 have been amended. A subsequent Amendment in a Response to a Final Office Action has been filed on July 21, 2008, wherein the Claims have not been further amended.

A Request for Continued Examination in response to an Advisory Action has been filed on September 12, 2008. An Amendment has been submitted with the Request for Continued Examination on September 12, 2008, wherein Claims 1, 7, 12, 14-16, and 21-25 have been amended, and wherein Claims 26-28 have been added. An Amendment in a Response to a Non-Final office Action has been filed on January 29, 2009, wherein Claims 1-28 have been amended. Claims 1-27 have been finally rejected in the Final Office Action, dated April 28, 2009; however, the disposition of Claim 28 has not been stated in such Final Office Action. An Amendment in a Response to a Final Office Action has been filed on June 25, 2009, wherein Claims 1, 15, 16, 21, and 25 have been further amended after final rejection.

A Request for Continued Examination in response to an Advisory Action has been filed on July 23, 2009. An Amendment in a Response to a Non-Final office Action has been filed on January 27, 2010, wherein Claims 1, 15, 16, 21, and 25 have been amended. Claims 1-28 have been finally rejected in the Final Office Action, dated April 29, 2010. An Amendment in a Response to a Final Office Action has been filed on June 18, 2010, wherein Claims 1, 15, 16, 21, and 25 have been further amended after final rejection.

Accordingly, Claims 1-28, as reflected in the January 27, 2010, Amendment and in the July 29, 2010, Notice of Appeal, having been filed in response to an Advisory Action, are the subject of this Appeal. The Claims that are subject of this Appeal are attached hereto as Appendix A.

IV. STATUS OF AMENDMENTS

An Amendment in a Response to a Final Office Action has been filed on June 18, 2010, wherein Claims 1, 15, 16, 21, and 25 have been further amended after final rejection. However, the June 18, 2010, Amendment has not been entered as noted in the July 1, 2010, Advisory Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1, 15, 16, 21, and 25 are independent claims in this Appeal. The subject matter of independent Claims 1 and 16 relate to the Appellant's method of interactively displaying and rating at least one string of content. The subject matter of independent Claim 15 relates to the Appellant's system for interactively displaying and rating at least one string of content. The subject matter of independent Claim 21 relates to the Appellant's device for interactively displaying and rating at least one string of content. The subject matter of independent Claim 25 relates to the Appellant's computer-readable medium having computer-executable instructions for performing a method.

Independent Claim 1 addresses a method of interactively displaying and rating at least one string of content (Specification, p. 5, ll. 19-21), the method comprising: receiving at least one string of content (Specification, p. 6, ll. 20-22), the at least one string of content receiving step comprising streaming the at least one string of content in real-time for viewing while being captured (Specification, p. 5, ll. 21-22); separating each at least one string of content into a plurality of segments (Specification, p. 9, ll. 8-9), each segment of the plurality of segments having a corresponding plurality of original in-and-out points (Specification, p. 9, ll. 13-14); creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content (Specification, p. 9, ll. 15-16), the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points (Specification, p. 9, ll. 17-20), thereby providing a plurality of in-and-out points within each segment (Specification, p. 9, ll. 20-21); showing the at least one string of content on at least one display device (Specification, p. 10, ll. 7-8); receiving a vote on each segment of the plurality of segments of each at least one string of content (Specification, p. 10, ll. 9-13), wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content (Specification, p. 10, ll. 20-21), thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment (Specification, p. 11, ll. 2-5); and updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value (Specification, p. 16, ll. 18-19). The method of independent Claim 1 is also

generally illustrated in Figure 6. Claims 2-14 and 26 ultimately depend from Claim 1 as their base claim.

Independent Claim 15 addresses a system for interactively displaying and rating at least one string of content (Specification, p. 5, ll. 19-21), the system comprising: means for receiving at least one string of content (Specification, p. 6, ll. 20-22), the at least one string of content streaming in real-time for viewing while being captured (Specification, p. 7, ll. 22-23); means for separating each at least one string of content into a plurality of segments (Specification, p. 9, ll. 8-9), each segment of the plurality of segments having a corresponding plurality of original in-and-out points (Specification, p. 9, ll. 13-14); means for creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content (Specification, p. 9, ll. 15-16), the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points (Specification, p. 9, ll. 17-20), thereby providing a plurality of in-and-out points within each segment (Specification, p. 9, ll. 17-20); means for showing the at least one string of content on at least one display device (Specification, p. 10, ll. 7-8); means for receiving a vote on each segment of the plurality of segments of the at least one string of content (Specification, p. 10, ll. 9-10), wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content (Specification, p. 10, ll. 20-21), whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment (Specification, p. 11, ll. 2-5); and means for updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value (Specification, p. 16, ll. 18-19). The system of independent Claim 15 is also generally illustrated in Figure 3. Claim 15 has no dependent claims.

Independent Claim 16 addresses a method of interactively displaying and rating at least one string of content (Specification, p. 5, ll. 19-21), the method comprising the steps of: identifying at least one string of content (Specification, p. 9, ll. 4-5), the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured (Specification, p. 5, ll. 21-22); separating each at least one string of content into a plurality of segments (Specification, p. 9, ll. 8-9), each segment of the plurality

of segments having a corresponding plurality of original in-and-out points (Specification, p. 9, ll. 13-14); creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content (Specification, p. 9, ll. 15-16), the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points (Specification, p. 9, ll. 17-20), thereby providing a plurality of in-and-out points within each segment (Specification, p. 9, ll. 20-21); showing the at least one string of content to a plurality of viewers (Specification, p. 10, ll. 7-8); receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers (Specification, p. 10, ll. 9-13), wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content (Specification, p. 10, ll. 20-21), thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment (Specification, p. 11, ll. 2-5); determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote (Specification, p. 17, ll. 12-14); and displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content (Specification, p. 19, ll. 17-20). The device of independent Claim 16 is generally illustrated in Figure 7. Claims 17-20 and 27 ultimately depend from Claim 16 as their base claim.

Independent Claim 21 addresses a device for interactively displaying and rating at least one string of content (Specification, p. 5, ll. 19-21), the device comprising: a content identification module for detecting at least one string of content and for separating the at least one string of content into a plurality of segments (Specification, p. 9, ll. 9-10), each segment of the plurality of segments having a corresponding plurality of original in-and-out points (Specification, p. 9, ll. 13-14), the at least one string of content streaming in real-time for viewing while being captured (Specification, p. 7, ll. 22-23); a storage module for storing the at least one string of content and a profile information, in a record, associated with each segment of the plurality of segments of the at least one string of content (Specification, p. 9, ll. 22-23), the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment (Specification, p. 9, ll. 17-20); an interface module for receiving the at least one string of content and transmitting

the at least one string of content based on the profile information corresponding to each segment of the plurality of segments of the at least one string of content (Specification, p. 10, ll. 3-11); and a content rating module for receiving a rating value from a viewer for each segment of the plurality of segments of the at least one string of content (Specification, p. 10, ll. 12-18), whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment (Specification, p. 11, ll. 2-5), and for updating the profile information associated with each segment of the plurality of segments of the at least one string of content (Specification, p. 16, ll. 18-19), wherein the rating value reflects the quality of each segment of the plurality of segments of the at least one string of content (Specification, p. 10, ll. 20-21). The device of independent Claim 21 is generally illustrated in Figure 3. Claims 22-24 and 28 ultimately depend from Claim 21 as their base claim.

Independent Claim 25 addresses a computer-readable medium having computer-executable instructions for performing a method, the method comprising: identifying at least one string of content (Specification, p. 9, ll. 4-5), the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured (Specification, p. 5, ll. 21-22); separating each at least one string of content into a plurality of segments (Specification, p. 9, ll. 8-9), each segment of the plurality of segments having a corresponding plurality of original in-and-out points (Specification, p. 9, ll. 13-14); creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content (Specification, p. 9, ll. 15-16), the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points (Specification, p. 9, ll. 17-20), thereby providing a plurality of in-and-out points within each segment (Specification, p. 9, ll. 17-20); showing the at least one string of content to a plurality of viewers (Specification, p. 10, ll. 7-8); receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers (Specification, p. 10, ll. 9-13), wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content (Specification, p. 10, ll. 20-21), thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment (Specification, p. 11, ll. 2-5); determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote (Specification,

p. 17, ll. 12-14); and displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content (Specification, p. 19, ll. 17-20). The device of independent Claim 25 is generally illustrated in Figure 7. Claim 25 has no dependent claims.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether Claims 1-6 and 8-15 are unpatentable, under 35 U.S.C. § 103(a), over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), and in further view of Taniguchi (US 2003/0093810)
- B. Whether Claims 7, 16, 17, 20-26, and 28 are unpatentable, under 35 U.S.C. § 103(a), over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678)
- C. Whether Claim 18 is unpatentable, under 35 U.S.C. § 103(a), over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), in view of Taniguchi (US 2003/0093810) and Peliotis (US 2002/0065678), and in further view of Lautzenheiser et al. (US 7054827)
- D. Whether the Examiner has erred as a matter of law in failing to consider and treat the present application, having more than three (3) actions as well as a pendency of more than five (5) years, as being “special,” under 37 C.F.R. § 1.102, MPEP §§ 707.02 and 708.01

VII. ARGUMENT

A. Whether Claims 1-6 and 8-15 are unpatentable, under 35 U.S.C. § 103(a), over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), and in further view of Taniguchi (US 2003/0093810)

1. Specific Nature of the Rejection as to Issue A

Claims 1-6 and 8-15 have been rejected, under 35 U.S.C. § 103(a), as being unpatentable over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), and in further view of Taniguchi (US 2003/0093810), on the grounds that Franken et al. disclose “a method of displaying ... and rating content ... comprising: receiving at least one string of content ... ; creating profile information ...; showing the at least one string of content ...; and updating the profile information ...[.]” that Zilliacus discloses “... a plurality of users ... vote as to the quality of the programs[.]” and that Taniguchi discloses “... a plurality of leading and terminal ends within the original in-and-out points segmenting the metadata associated with the content segment” (April 29, 2010, Final Office Action, p. 4, ll. 13-21; p. 3, ll. 10-12). The Appellants respectfully traverse these grounds for rejection on this basis.

2. Analysis of the patentable distinctions between the present invention and Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), and in further view of Taniguchi (US 2003/0093810) as to Issue A

The law, under 35 U.S.C. § 103, is well settled that, for a cited reference or a combination of references to render obvious a claimed invention, the combination of the claimed elements and limitations must be taught, suggested, motivated, or otherwise obviated by that cited reference or that combination of cited references, even under *KSR v. Teleflex, Inc., et al.*, 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). See also *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985); *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970); and *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).

In particular, *KSR v. Teleflex* holds that the proper objective framework for such an obviousness inquiry is set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), (*KSR International v. Teleflex, Inc. et al.*, Slip Op 04-1350 at 17): "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and *the level of ordinary skill in the pertinent art* resolved." [Emphasis added.]

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 1, as amended on January 27, 2010, from Franken et al. (US 7028323), even in view of Zilliagus (US 2004/0005900), and even in further view of Taniguchi (US 2003/0093810), are as follows:

- a. "receiving at least one string of content, the at least one string of content receiving step comprising streaming the at least one string of content in real-time for viewing while being captured;"
- b. "separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;"
- c. "creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;"
- d. "showing the at least one string of content on at least one display device;"
- e. "receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and"
- f. "updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value." [Emphasis added.]

Accordingly, Claims 2-6 and 8-14, subsuming the combination of elements and limitations of base Claim 1 by dependency, are also believed to be patentably distinct over Franken et al. (US 7028323), even in view of Zilliacus (US 2004/0005900), and even in further view of Taniguchi (US 2003/0093810).

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 15, as amended on January 27, 2010, from Franken et al. (US 7028323), even in view of Zilliacus (US 2004/0005900), and even in further view of Taniguchi (US 2003/0093810), are as follows:

- a. “means for receiving at least one string of content, the at least one string of content streaming in real-time for viewing while being captured;”
 - b. **“means for separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;”**
 - c. **“means for creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;”**
 - d. “means for showing the at least one string of content on at least one display device;”
 - e. “means for receiving a vote on each segment of the plurality of segments of the at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content,”
 - f. **“whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and”**
 - g. “means for updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value.”
- [Emphasis added.]

Accordingly, Claim 15 is believed to be patentably distinct over Franken et al. (US 7028323), even in view of Ziliacus (US 2004/0005900), and even in further view of Taniguchi (US 2003/0093810). Claim 15 is an independent claim.

Analyzing the facts as to Claims 1-6 and 8-15 in relation to Issue A, the Examiner concedes that Franken et al. do not teach “separating each at least one string of content into a plurality of segments, wherein each segment has a plurality of original in-and-out points and wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out within each segment,” “a vote reflecting the quality of each segment of the content, is received on the content, thereby providing a rating value having a quantifiable significance to the in-and-out points[,]” and “that the profile information is updated according to the vote” (April 29, 2010, Final Office Action, p. 4, l. 21 - p. 5, l. 4). The Examiner further concedes Franken et al. do not teach “capturing content, particularly television programs, using a digital video camera that also records the audio associated with the video,” but merely takes Official Notice without proffering any object evidence therefor. The Examiner also concedes that Taniguchi merely “discloses in Figure 2, a plurality of leading and terminal ends within the original in-and-out points segmenting the metadata associated with the content segment” (April 29, 2010, Final Office Action, p. 4, ll. 13-21; p. 3, ll. 10-12; Fig. 2). The Appellants respectfully submit that Taniguchi does not actually teach, suggest, motivate, or otherwise obviate the following claimed limitation, *inter alia*: “record identifying a plurality of **new in-and-out points within** the plurality of **original in-and-out points**, thereby providing a plurality of **in-and-out points within each segment**” in light of the meaning in the originally filed specification and that the Examiner has misinterpreted the meaning of “in-and-out points” as described in the Appellants’ Specification (p. 9, ll. 13-21). [Emphasis added.]

With respect to the primary cited reference, Franken et al. merely discloses a system that rates “rerun programming in other than real time,” storing the rerun programming in separate smaller files for delivery in its entirety to the viewer, but does not actually disclose or imply segmenting each item of rerun programming (Abstract; col. 4, ll. 16-30; col. 5, ll. 20-28).

With respect to the secondary cited reference, Zilliacus merely discloses: "A method allows a user of a mobile terminal to participate in an interactive service relating to multimedia programming. A software application is stored in the mobile terminal. The software application is launched so that it is prepared to receive information concerning the interactive service from a server. Upon receipt of this information, the software application utilizes a stored user interface to prompt the user of the mobile terminal. The software application utilizes previous received information concerning the user so that when the information is received, the user interface prompting the user is provided automatically and without the need for user approval." (Abstract; Fig. 6; Para. 27). Thus, the Zilliacus invention actually discloses a method for ranking programming by voting, but it does not actually disclose or imply segmenting each item of rerun programming

With respect to the tertiary cited reference, Taniguchi merely discloses: "In a video data transmitting method of sending in real-time video data being externally inputted, when encoding video data being inputted as stream data, start and stop of an encoding process is repeated at a predetermined time interval to carry out a data dividing process whereby a plurality of time-continuous video data are generated as partial video data. Also, metadata of partial video data is generated, which is sent, together with the partial video data, in real-time as partial video metadata." (Abstract).

In particular, Taniguchi actually discloses a video segmentation, with reference to Figure 2, that is distinct from the claimed elements and limitations of the present invention:

[0047] FIG. 2 illustrates a relationship between whole video data, partial video data and scene data. "Whole video data" refers to the whole video data to be continuously sent by one video transmitting apparatus 101a, 101b, 101c. On the contrary, "partial video data" is a part of whole video data segmented with a proper length. The individual partial video data is independent video data to be singly decoded/displayed. In other words, whole video data is configured with a plurality of partial video data that are time-continuous. For example, in the case the video transmitting apparatus 101a, 101b, 101c is in continuous operation on weekdays while shut down on Saturday and Sunday wherein, during operation, dividing process is made to repeat a start/end of video encode process on video data at a time interval of 1 hour, a series of video data on weekdays is "whole video data" while the video data segmented by 1 hour is "partial video data".

[0048] In this manner, because the video transmitting apparatus 101a, 101b, 101c transmits whole video data while segmenting it into partial video data, the video receiving apparatus 102 is

allowed to store received video data as a plurality of time-continuous video data files instead of storing it as one video data file.

[0049] Note that, hereinafter, in case "whole video data" and "partial video data", need not to be especially differentiated, are each merely referred to as "video data".

[0050] Explanation is now made on "scene data". As in the foregoing, the video transmitting apparatus 101 has means for conducting video data analysis to carry out a scene dividing process on video data. Hence, the **partial video data is further segmented into scene data**. Note that **each one of scene data**, not data separately independent of as a discrete data file, **means a logical segment of partial video data**. Meanwhile, partial video data itself does not contain information about scene data. The information about a scene structure of partial video data is described in metadata of the partial video data. [Emphasis added.]

Nowhere, in Taniguchi, is a "record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment" actually taught. Rather, Taniguchi merely teaches: "**Whole video data**" refers to the whole video data to be continuously sent by one video transmitting apparatus On the contrary, "**partial video data**" is a part of whole video data segmented with a proper length. ... during operation, dividing process is made to repeat a start/end of video encode process on video data at a time interval of 1 hour, a series of video data on weekdays is "whole video data" while the video data segmented by 1 hour is "partial video data" ... **partial video data is further segmented into scene data ... each one of scene data ... means a logical segment of partial video data.**" [Emphasis added.]

In a closer reading of Taniguchi in relation to Figure 2, this cited reference actually discloses that the whole video data is divided into partial video data defined by a predetermined time interval, such as 1 hour, each piece of partial video data having a leading end and a terminal end, which is, in turn, divided into scene data, each piece of scene data being defined as "logical segment of partial video data." In particular, Taniguchi teaches that "the video transmitting apparatus 101 has means for conducting video data analysis to carry out a scene dividing process on video data. Hence, the partial video data is further segmented into **scene data**." [Emphasis added.] Although Taniguchi may teach a first level of partial video data, having a leading end and a terminal end, as well as a second level of partial video data comprising **scene data**, such scene data does not have "new in-and-out points" within "original in-and-out points" as described and claimed in the present application.

In contrast to the cited art, the present invention generally involves the following salient features, *inter alia*: “receiving at least one string of content, the at least one string of content receiving step comprising *streaming the at least one string of content in real-time* for viewing while being captured; separating each at least one string of content into a plurality of segments, *each segment of the plurality of segments having a corresponding plurality of original in-and-out points*; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, *the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment*; ... receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, *thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment*[.]” [Emphasis added.]

In a closer reading of the present application, with respect to video footage, for example, the “original in-and-out points” correspond to start/stop signals for (initially) separating multiple video segments (Specification, p. 9, ll. 8-14). Nowhere in the present application are the “original in-and-out points” defined as segmentation merely performed by using predetermined time intervals. Each segment or “piece of content” is then associated with a “record” (Specification, p. 9, l. 15; Fig. 4). The “record” contains additional information corresponding to each “piece of content” and identifies “new in-and-out points” within the “original in-and-out points” (Specification, p. 9, ll. 18-19). In particular, the presently claimed “rating value” establishes the “in-and-out points” in the present invention (Specification, p. 11, ll. 2-3), rather than the merely predetermined time intervals or mere predetermined video data analysis to effect scene dividing of the first level partial video into the second level partial video data, i.e., “logical” “scene data” of Taniguchi. In the present invention, the “new in-and-out points” do not necessarily correspond to merely “logical” scene breakdowns. Rather, these “new in-and-out points” correspond to video clips having “quantifiable significance” and are user-driven or audience-driven (Specification, p. 11, ll. 2-4).

As such, the Appellants respectfully submit that the cited art does not teach, suggest, motivate, or otherwise obviate the combination of elements and limitations as respectively recited in herein amended independent Claims 1 and 15 of the present application, wherein some of the combined salient features are indicated in boldface:

1. A method of **interactively displaying and rating at least one string of content**, comprising:

receiving at least one string of content, the at least one string of content receiving step comprising **streaming the at least one string of content in real-time** for viewing while being captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content on at least one display device;

receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and

updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value. [Emphasis added.]

15. A system for **interactively displaying and rating at least one string of content**, comprising:

means for receiving at least one string of content, the at least one string of content **streaming in real-time** for viewing while being captured;

means for **separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;**

means for **creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;**

means for showing the at least one string of content on at least one display device;

means for **receiving a vote on each segment of the plurality of segments of the at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and**

means for **updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value.** [Emphasis added.]

Accordingly, Claims 2-6 and 8-14, subsuming the limitations of their respective base claims by dependency, are also believed to overcome the cited art.

In addition, the Appellants respectfully submit that the April 29, 2010, Final Office Action has not properly ascertained the differences between the prior art and the claims at issue or resolved the level of ordinary skill in the pertinent art. Reiterating, the Appellants recognize that an obviousness rejection may be proper in certain instances in light of *KSR v. Teleflex, Inc., et al.*, 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). However, *KSR v. Teleflex* specifically holds that the proper objective framework for such an obviousness inquiry is still set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), (*KSR International v. Teleflex, Inc. et al.*, Slip Op 04-1350 at 17): "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and *the level of ordinary skill in the pertinent art* resolved." [Emphasis added.]

Specifically, the Appellants respectfully submit that the Examiner has not properly ascertained the differences between the prior art and the claims at issue or resolved the level of ordinary skill in the pertinent art. For example, the Appellants note that a distinction between the primary reference, Franken et al., and presently claimed invention is that Franken et al. merely disclose a system that rates rerun programming in other than real time. However, the present application claims the following salient features, *inter alia*: "receiving at least one string of content, the at least one string of content receiving step comprising *streaming the at least one string of content in real-time* for viewing while being captured; separating each at least one string of content into a plurality of segments, *each segment of the plurality of segments having a corresponding plurality of original in-and-out points*; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, *the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment*; ... receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, *thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each*

segment[.]” [Emphasis added.] The April 29, 2010, Final Office Action fails to explain how Franken et al.’s device may be modified to generate a plurality of new in-and-out points within a plurality of original in-and-out-points using a rating value, *inter alia*, i.e., ascertained the differences between the prior art and the claims at issue.

As such, the Appellants respectfully submit that the Examiner fails to resolve the level of ordinary skill in the art and has failed to show any evidence in the form of enabling details that one of ordinary skill would modify Franken et al. to apply to “new in-and-out points” within “original in-and-out points,” as proposed in the April 29, 2010, Final Office Action, other than by a blanket statement. As such, the Appellants respectfully submit that the Examiner has not sustained the rejection of the claims on the basis of obviousness, even under *KSR v. Teleflex*.

Alternatively, the Appellants respectfully submit that the Examiner has not sustained the rejection of Claims 4-6 on this basis of obviousness in merely taking Official Notice that “capturing content, **particularly television programs**, using a digital video camera that also records the audio associated with the video” is a well-known concept in the art in a blanket statement without proffering any object evidence to support the assertion or any evidence to support obviousness for the foregoing limitation in combination with all recited elements and limitations of the base claim and any intervening claims. The Appellants hereby respectfully traverse this Official Notice taken by the Examiner and further respectfully submit that the Examiner has conceded that such Official Notice does **not** constitute admitted prior art for failure to so state in the April 29, 2010, Final Office Action (p. 6, ll. 13-17).

The relevant rule is MPEP § 2144.03 which provides:

2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art [R-6]
In *>certain< circumstances >where appropriate<, ** an examiner *>may< take official notice of facts not in the record or * rely on "common knowledge" in making a rejection, however such rejections should be judiciously applied.

PROCEDURE FOR RELYING ON COMMON KNOWLEDGE OR TAKING OFFICIAL NOTICE

The standard of review applied to findings of fact is the "substantial evidence" standard under the Administrative Procedure Act (APA). See *In re Gartside*, 203 F.3d 1305, 1315, 53 USPQ2d

1769, 1775 (Fed. Cir. 2000). See also MPEP § 1216.01. In light of recent Federal Circuit decisions as discussed below and the substantial evidence standard of review now applied to USPTO Board decisions, the following guidance is provided in order to assist the examiners in **determining when it is appropriate to take official notice of facts without supporting documentary evidence or to rely on common knowledge in the art in making a rejection, and if such official notice is taken, what evidence is necessary to support the examiner's conclusion of common knowledge in the art.**

A. Determine When It Is Appropriate To Take Official Notice Without Documentary Evidence To Support the Examiner's Conclusion

Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). In *Ahlert*, the court held that the Board properly took judicial notice that "it is old to adjust intensity of a flame in accordance with the heat requirement." See also *In re Fox*, 471 F.2d 1405, 1407, 176 USPQ 340, 341 (CCPA 1973) (the court took "judicial notice of the fact that tape recorders commonly erase tape automatically when new 'audio information' is recorded on a tape which already has a recording on it"). In appropriate circumstances, it might not be unreasonable to take official notice of the fact that it is desirable to make something faster, cheaper, better, or stronger without the specific support of documentary evidence. Furthermore, it might not be unreasonable for the examiner in a *first Office action* to take official notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without the support of documentary evidence provided the facts so noticed are of notorious character and serve only to "fill in the gaps" which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection. *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *Ahlert*, 424 F.2d at 1092, 165 USPQ at 421.

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) ("[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory."); *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such

"expertise may provide sufficient support for conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. **

B. If Official Notice Is Taken of a Fact, Unsupported by Documentary Evidence, the Technical Line of Reasoning Underlying a Decision To Take Such Notice Must Be Clear and Unmistakable

**In certain older cases, official notice has been taken of a fact that is asserted to be "common knowledge" without specific reliance on documentary evidence where the fact noticed was readily verifiable, such as when other references of record supported the noticed fact, or where there was nothing of record to contradict it. See *In re Soli*, 317 F.2d 941, 945-46, 137 USPQ 797, 800 (CCPA 1963) (accepting the examiner's assertion that the use of "a control is standard procedure throughout the entire field of bacteriology" because it was readily verifiable and disclosed in references of record not cited by the Office); *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943) (accepting the examiner's finding that a brief heating at a higher temperature was the equivalent of a longer heating at a lower temperature where there was nothing in the record to indicate the contrary and where the applicant never demanded that the examiner produce evidence to support his statement). If such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241. The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice **>so as to adequately traverse the rejection< in the next reply after the Office action in which the common knowledge statement was made.

C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

D. Determine Whether the Next Office Action Should Be Made Final

If the examiner adds a reference in the next Office action after applicant's rebuttal, and the newly added reference is added only as directly corresponding evidence to support the prior common knowledge finding, and it does not result in a new issue or constitute a new ground of rejection, the Office action may be made final. If no amendments are made to the claims, the examiner must not rely on any other teachings in the reference if the rejection is made final. If the newly cited reference is added for reasons other than to support the prior common knowledge statement and a new ground of rejection is introduced by the examiner that is not necessitated by applicant's amendment of the claims, the rejection may not be made final. See MPEP § 706.07(a).

E. Summary

Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner's conclusion should be judiciously applied. Furthermore, as noted by the court in *Ahlert*, any facts so noticed should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based. See *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697; *Ahlert*, 424 F.2d at 1092, 165 USPQ 421. [Emphasis added.]

Applying the foregoing rules to the instant case, the Examiner has not proffered any evidence whatsoever as to why "capturing content, *particularly television programs*, using a digital video camera ..." is a well-known concept in the art, nor has the Examiner explicitly set forth any reasoning for the basis of the Official Notice. The Appellants respectfully submit that digital video cameras in the related art are typically used for capturing live content to be subsequently transmitted to, and played on, a larger device, e.g., having a larger screen. The Appellants are not aware of the reverse situation, as asserted by the Examiner, i.e., using a digital video camera to download **television programs** from a larger device to be stored and played on the digital video camera's smaller monitor screen, being taught, suggested, motivated, or otherwise obviated in the related art. Also, digital video cameras do not typically include elements, such as timers or converters, which would be necessary to actually capture "television programs" or television broadcasts. This being so, digital video cameras are not believed to have any inherent capabilities for capturing content that is in the form of television programs or broadcasts.

As such, the Appellants respectfully submit that the Examiner has erred as a matter of law in taking Official Notice in the absence of substantial evidence therefor. The Appellants

further respectfully request that the Examiner provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding of an Official Notice, under MPEP § 2144.03 and 37 C.F.R. § 1.104(d)(2).

3. Conclusion as to Issue A

Thus, the Appellants respectfully submit that Claims 1-6 and 8-15 are believed to overcome these grounds for rejection. Therefore, the Appellants respectfully request that these grounds for rejection on this basis are reversed and that Claims 1-6 and 8-15 are passed to allowance in due course.

B. Whether Claims 7, 16, 17, 20-26, and 28 are unpatentable, under 35 U.S.C. § 103(a), over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678)

1. Specific Nature of the Rejection as to Issue B

Claims 7, 16, 17, 20-26, and 28 have been rejected, under 35 U.S.C. § 103(a), as being unpatentable over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678), on the grounds that Franken et al. disclose “a method of displaying ... and rating content ... comprising: receiving at least one string of content ... ; creating profile information ...; showing the at least one string of content ...; and updating the profile information ...[.]” that Zilliacus discloses “... a plurality of users ... vote as to the quality of the programs[.]” that Taniguchi discloses “... a plurality of leading and terminal ends within the original in-and-out points segmenting the metadata associated with the content segment[.]” and that Peliotis teaches “selecting and excluding video segments in a video stream ...” (April 29, 2010, Final Office Action, p. 10, ll. 3-11). The Appellants respectfully traverse these grounds for rejection on this basis.

2. Analysis of the patentable distinctions between the present invention and Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678), as to Issue B

The law, under 35 U.S.C. § 103, is well settled that, for a cited reference or a combination of references to render obvious a claimed invention, the combination of the claimed elements and limitations must be taught, suggested, motivated, or otherwise obviated by that cited reference or that combination of cited references, even under *KSR v. Teleflex, Inc., et al.*, 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). See also *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985); *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970); and *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).

In particular, *KSR v. Teleflex* holds that the proper objective framework for such an obviousness inquiry is set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), (*KSR International v. Teleflex, Inc. et al.*, Slip Op 04-1350 at 17): “Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.” [Emphasis added.]

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 1, as amended on January 27, 2010, from Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678), are as follows:

- a. “receiving at least one string of content, the at least one string of content receiving step comprising streaming the at least one string of content in real-time for viewing while being captured;”
- b. “separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;”

- c. **“creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;”**
- d. **“showing the at least one string of content on at least one display device;”**
- e. **“receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and”**
- f. **“updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value.”**

Thus, by dependency, Claims 7 and 26, subsuming the combination of elements and limitations of base Claim 1 by dependency, are also believed to be patentably distinct over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678).

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 16, as amended on January 27, 2010, from Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678), are as follows:

- a. **“identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured;”**
- b. **“separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;”**
- c. **“creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby**

providing a plurality of in-and-out points within each segment;”

- d. “showing the at least one string of content to a plurality of viewers;”
- e. “receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, **wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;**”
- f. “determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote; and”
- g. “displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content.” [Emphasis added.]

Thus, by dependency, Claim 17 and 20, subsuming the combination of elements and limitations of base Claim 16 by dependency, are also believed to be patentably distinct over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678).

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 21, as amended on January 27, 2010, from Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678), are as follows:

- a. **“a content identification module for detecting at least one string of content and for separating the at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points, the at least one string of content streaming in real-time for viewing while being captured;”**
- b. **“a storage module for storing the at least one string of content and a profile information, in a record, associated with each segment of the plurality of segments of the at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;”**

- c. “an interface module for receiving the at least one string of content and transmitting the at least one string of content based on the profile information corresponding to each segment of the plurality of segments of the at least one string of content; and”
- d. “a content rating module for receiving a rating value from a viewer for each segment of the plurality of segments of the at least one string of content, **whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment**, and for updating the profile information associated with each segment of the plurality of segments of the at least one string of content, wherein the rating value reflects the quality of each segment of the plurality of segments of the at least one string of content.” [Emphasis added.]

Thus, by dependency, Claim 22-24 and 28, subsuming the combination of elements and limitations of base Claim 21 by dependency, are also believed to be patentably distinct over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678).

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 25, as amended on January 27, 2010, from Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900) and Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678), are as follows:

- a. “identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured;”
- b. “separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;”
- c. “creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;”
- d. “showing the at least one string of content to a plurality of viewers;”

- e. “receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, **wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;**”
- f. “determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote; and”
- g. “displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content.” [Emphasis added.] Claim 25 has no dependent claims.

Analyzing the facts as to Claims 7, 16, 17, 20-26, and 28 in relation to Issue B, the Examiner concedes that Franken et al. do not teach “separating each at least one string of content into a plurality of segments, wherein each segment has a plurality of original in-and-out points and wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out within each segment,” and “a vote reflecting the quality of each segment of the content, is received on the content, thereby providing a rating value having a quantifiable significance to the in-and-out points[.]” and “that the profile information is updated according to the vote” (April 29, 2010, Final Office Action, p. 4, l. 21 - p. 5, l. 4). Further, the Examiner concedes “Franken et al., as modified by Zlliacus and Taniguchi, do not teach “identifying the content from multiple pieces of content” (April 29, 2010, Final Office Action, p. 10, ll. 1-2). Even further, the Examiner concedes that Franken et al. do not teach “identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content (1), receiving a vote reflecting the quality of the content from a plurality of viewers, thereby providing rating value having a quantifiable significance to the in-and-out points (2), and separating each at least one string of content into a plurality of original in-and-out points corresponding to each segment (3); wherein each segment has a plurality of original in-and-out points (4)[.] and wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment (5)” (April 29, 2010, Final Office Action, p. 11, ll. 7-14).

With respect to the primary cited reference, Franken et al. merely discloses a system that rates “rerun programming in other than real time,” storing the rerun programming in separate smaller files for delivery in its entirety to the viewer, but does not actually disclose or imply segmenting each item of rerun programming (Abstract; col. 4, ll. 16-30; col. 5, ll. 20-28).

With respect to the secondary cited reference, Zilliacus merely discloses: “A method allows a user of a mobile terminal to participate in an interactive service relating to multimedia programming. A software application is stored in the mobile terminal. The software application is launched so that it is prepared to receive information concerning the interactive service from a server. Upon receipt of this information, the software application utilizes a stored user interface to prompt the user of the mobile terminal. The software application utilizes previous received information concerning the user so that when the information is received, the user interface prompting the user is provided automatically and without the need for user approval.” (Abstract; Fig. 6; Para. 27). Thus, the Zilliacus invention is actually a method for ranking programming by voting, but does not actually disclose or imply segmenting each item of rerun programming.

With respect to the tertiary cited reference, Taniguchi merely discloses: “In a video data transmitting method of sending in real-time video data being externally inputted, when encoding video data being inputted as stream data, start and stop of an encoding process is repeated at a predetermined time interval to carry out a data dividing process whereby a plurality of time-continuous video data are generated as partial video data. Also, metadata of partial video data is generated, which is sent, together with the partial video data, in real-time as partial video metadata.” (Abstract).

With respect to the quaternary cited reference, Peliotis merely discloses segmenting a video program by generating markers and tags to define each segment, but does not disclose or imply segmenting a video program and “establishing a quantifiable significance corresponding to the plurality of in-and-out points” by way of a “rating value” as a result of voter input within any given segment (Abstract; Fig. 1; Para. 23). Peliotis further discloses that the markers and tags are fed to the filter/comparator along with, but not as a result of, the user preferences (Fig. 2).

In contrast to the cited art, the present invention generally involves the following salient features, *inter alia*: “receiving at least one string of content, the at least one string of content receiving step comprising *streaming the at least one string of content in real-time* for viewing while being captured; separating each at least one string of content into a plurality of segments, *each segment of the plurality of segments having a corresponding plurality of original in-and-out points*; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, *the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment*; ... receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, *thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment*[.]”

Further, the Applicants respectfully submit that the Examiner may have inadvertently engaged in impermissible hindsight reconstruction, especially in light of the **inordinate number of references cited, four references**, by using the Applicants’ invention as a roadmap in order to arrive at the subject matter of Claims 7, 16, 17, 20-26, and 28.

Reiterating, the Examiner concedes that Franken et al. do not teach (1) separating each at least one string of content into a plurality of segments, (2) wherein each segment has a plurality of original in-and-out points and wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out within each segment, (3) a vote reflecting the quality of each segment of the content, is received on the content, thereby providing a rating value having a quantifiable significance to the in-and-out points, (4) the profile information is updated according to the vote, (5) identifying the content from multiple pieces of content, (6) identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content, (7) receiving a vote reflecting the quality of the content from a plurality of viewers, thereby providing rating value having a quantifiable significance to the in-and-out points, and (8) separating each at least one string of content into a plurality of original in-and-out points

corresponding to each segment; (9) wherein each segment has a plurality of original in-and-out points, (10) wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment.

Consequently, the Examiner concedes that **the primary reference fails to disclose at least ten of the claimed elements and limitations**, but cites the secondary reference, the tertiary reference, and the quaternary reference for reconstructing the present invention. Yet Claims 7, 16, 17, 20-26, and 28 recite a combination of elements and limitations that include features well beyond what even these four cited references may, at best, disclose.

As such, the Appellants respectfully submit that the cited art does not teach, suggest, motivate, or otherwise obviate, in any other manner, the combination of elements and limitations, *inter alia*, as recited in independent Claims 1, 15, 16, 21, and 25 of the present application, some of the combined salient features being indicated in boldface:

1. A method of **interactively displaying and rating at least one string of content**, comprising:

receiving at least one string of content, the at least one string of content receiving step comprising **streaming the at least one string of content in real-time for viewing while being captured**;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content on at least one display device;

receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and

updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value.
[Emphasis added.]

15. A system for **interactively displaying and rating at least one string of content**, comprising:

means for receiving at least one string of content, the at least one string of content **streaming in real-time for viewing while being captured**;

means for separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

means for creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

means for showing the at least one string of content on at least one display device;

means for receiving a vote on each segment of the plurality of segments of the at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and

means for updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value. [Emphasis added.]

16. A method of interactively displaying and rating at least one string of content, comprising the steps of:

identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content to a plurality of viewers;

receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;

determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote; and

displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content. [Emphasis added.]

21. A device for interactively displaying and rating at least one string of content, comprising:

a content identification module for detecting at least one string of content and for separating the at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points, the at least one string of content streaming in real-time for viewing while being captured;

a storage module for storing the at least one string of content and a profile information, in a record, associated with each segment of the plurality of segments of the at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

an interface module for receiving the at least one string of content and transmitting the at least one string of content based on the profile information corresponding to each segment of the plurality of segments of the at least one string of content; and

a content rating module for receiving a rating value from a viewer for each segment of the plurality of segments of the at least one string of content, whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment, and for updating the profile information associated with each segment of the plurality of segments of the at least one string of content, wherein the rating value reflects the quality of each segment of the plurality of segments of the at least one string of content. [Emphasis added.]

25. A computer-readable medium having computer-executable instructions for performing a method comprising:

identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content to a plurality of viewers;

receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;

determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote for establishing the plurality of in-and-out points; and

displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content. [Emphasis added.]

Accordingly, Claims 7, 17, 20, 22-24, 26, and 28, subsuming the limitations of their respective base claims by dependency, are also believed to overcome the cited art.

In addition, the Appellants respectfully submit that the April 29, 2010, Final Office Action has not properly ascertained the differences between the prior art and the claims at issue or resolved the level of ordinary skill in the pertinent art. Reiterating, the Appellants recognize that an obviousness rejection may be proper in certain instances in light of *KSR v. Teleflex, Inc.*, *et al.*, 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). However, *KSR v. Teleflex* specifically holds that the proper objective framework for such an obviousness inquiry is still set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), (*KSR International v. Teleflex, Inc. et al.*, Slip Op 04-1350 at 17): "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and

the level of ordinary skill in the pertinent art resolved.” [Emphasis added.]

Specifically, the Appellants respectfully submit that the Examiner has not properly ascertained the differences between the prior art and the claims at issue or resolved the level of ordinary skill in the pertinent art. For example, the Appellants note that a distinction between the primary reference, Franken et al., and presently claimed invention is that Franken et al. merely discloses a system that rates rerun programming in other than real time.” However, the present application claims the following salient features, *inter alia*: “receiving at least one string of content, the at least one string of content receiving step comprising *streaming the at least one string of content in real-time* for viewing while being captured; separating each at least one string of content into a plurality of segments, *each segment of the plurality of segments having a corresponding plurality of original in-and-out points*; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, *the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment*; ... receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, *thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment*[.]” [Emphasis added.] The April 29, 2010, Final Office Action fails to explain how Franken et al.’s device may be modified to generate a plurality of new in-and-out points within a plurality of original in-and-out-points using a rating value, *inter alia*, i.e., ascertained the differences between the prior art and the claims at issue.

As such, the Appellants respectfully submit that the Examiner fails to resolve the level of ordinary skill in the art and has failed to show any evidence in the form of enabling details that one of ordinary skill would modify Franken et al. to apply to “new in-and-out points” within “original in-and-out points,” as proposed in the April 29, 2010, Final Office Action, other than by a blanket statement. As such, the Appellants respectfully submit that the Examiner has not sustained the rejection of the claims on the basis of obviousness, even under *KSR v. Teleflex*.

Further, the Appellants respectfully submit that the rejection on this basis is actually grounded in impermissible hindsight reconstruction by piecing together the cited references (**four**) by using the Appellant's claimed invention as a roadmap. The Examiner has merely made a blanket statement that one of ordinary skill would combine the teachings of Franken et al. (US 7028323), Zilliacus (US 2004/0005900), Taniguchi (US 2003/0093810), and Peliotis (US 2002/0065678) without presenting any evidence thereof.

The relevant procedural section is MPEP § 2142 which provides that "... In view of all factual information, the examiner must then make a determination **whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.**" [Emphasis added.]

In the instant case, the Examiner has pieced together elements from **four** cited references to arrive at the claimed invention. Where a claimed limitation has not been expressly or implicitly disclosed, e.g., "receiving at least one string of content, the at least one string of content receiving step comprising *streaming the at least one string of content in real-time* for viewing while being captured; separating each at least one string of content into a plurality of segments, *each segment of the plurality of segments having a corresponding plurality of original in-and-out points*; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, *the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment*; ... receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, *thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment,*" the Examiner merely makes a blanket statement

that such limitation is “disclosed” without proffering any evidence thereof or rationale therefore.

In addition, the rule under MPEP § 707.07(g) provides for the avoidance of “Piecemeal Examination” as follows: “**Piecemeal examination should be avoided** as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, **avoiding, however, undue multiplication of references.** (See MPEP § 904.03.)” {Emphasis added.} In the instant case, the Examiner has used a multiplicity of references, e.g., **four** references, in asserting these grounds for rejection on this basis.

3. Conclusion as to Issue B

Thus, the Appellants respectfully submit that Claims 7, 16, 17, 20-26, and 28 are believed to overcome these grounds for rejection. Therefore, the Appellants respectfully requests that these grounds for rejection on this basis are reversed and that Claims 7, 16, 17, 20-26, and 28 are passed to allowance in due course.

C. Whether Claim 18 is unpatentable, under 35 U.S.C. § 103(a), over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), in view of Taniguchi (US 2003/0093810) and Peliotis (US 2002/0065678), and in further view of Lautzenheiser et al. (US 7054827)

2. Specific Nature of the Rejection as to Issue C

Claim 18 has been rejected, under 35 U.S.C. § 103(a), as being unpatentable over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), in view of Taniguchi (US 2003/0093810) and Peliotis (US 2002/0065678), and in further view of Lautzenheiser et al. (US 7054827), on the grounds that Franken et al. disclose “a method of displaying ... and rating content ... comprising: receiving at least one string of content ... ; creating profile information ...; showing the at least one string of content ...; and updating the profile information ...[.]” that Zilliacus discloses “... a plurality of users ... vote as to the quality of the programs[,]” that Taniguchi discloses “... a plurality of leading and terminal ends within the original in-and-out

points segmenting the metadata associated with the content segment[.]” that Peliotis teaches “selecting and excluding video segments in a video stream ... [.]” and that Lautzenheiser teaches “validating a survey database and identifying portions of the survey database that are potentially problematic ...” (April 29, 2010, Final Office Action, p. 16, l. 15 - p. 17, l. 1). The Appellants respectfully traverse these grounds for rejection on this basis.

2. Analysis of the patentable distinctions between the present invention and Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), in view of Taniguchi (US 2003/0093810) and Peliotis (US 2002/0065678), and in further view of Lautzenheiser et al. (US 7054827), as to Issue C

The law, under 35 U.S.C. § 103, is well settled that, for a cited reference or a combination of references to render obvious a claimed invention, the combination of the claimed elements and limitations must be taught, suggested, motivated, or otherwise obviated by that cited reference or that combination of cited references, even under *KSR v. Teleflex, Inc., et al.*, 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). See also *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985); *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970); and *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).

In particular, *KSR v. Teleflex* holds that the proper objective framework for such an obviousness inquiry is set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), (*KSR International v. Teleflex, Inc. et al.*, Slip Op 04-1350 at 17): “Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.” [Emphasis added.]

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 16, as amended on September 22, 2009, from Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), in view of Taniguchi (US 2003/0093810) and Peliotis (US 2002/0065678), and in further view of Lautzenheiser et al. (US 7054827), are as follows:

- a. “identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured;”
- b. “separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;”
- c. “creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;”
- d. “showing the at least one string of content to a plurality of viewers;”
- e. “receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;”
- f. “determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote; and”
- g. “displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content.” [Emphasis added.]

Thus, by dependency, Claim 18, subsuming the combination of elements and limitations of base Claim 16 by dependency, are also believed to be patentably distinct over Franken et al. (US 7028323), in view of Ziliacus (US 2004/0005900), in view of Taniguchi (US 2003/0093810) and Peliotis (US 2002/0065678), and in further view of Lautzenheiser et al. (US 7054827).

Analyzing the facts as to Claim 18 in relation to Issue C, the Examiner concedes that Franken et al. do not teach “separating each at least one string of content into a plurality of segments, wherein each segment has a plurality of original in-and-out points and wherein the

record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out within each segment,” and “a vote reflecting the quality of each segment of the content, is received on the content, thereby providing a rating value having a quantifiable significance to the in-and-out points[,]” and “that the profile information is updated according to the vote” (April 29, 2010, Final Office Action, p. 4, l. 21 - p. 5, l. 4). Further, the Examiner concedes “Franken et al., as modified by Ziliacus and Taniguchi, do not teach “identifying the content from multiple pieces of content” (April 29, 2010, Final Office Action, p. 10, ll. 1-2). Even further, the Examiner concedes that Franken et al. do not teach “identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content (1), receiving a vote reflecting the quality of the content from a plurality of viewers, thereby providing rating value having a quantifiable significance to the in-and-out points (2), and separating each at least one string of content into a plurality of original in-and-out points corresponding to each segment (3); wherein each segment has a plurality of original in-and-out points (4)[,] and wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment (5)” (April 29, 2010, Final Office Action, p. 11, ll. 7-14). The Examiner also concedes that Franken et al., as modified by Ziliacus, Taniguchi, and Peliotis, do not teach “checking for a number of viewers submitting a vote” (April 29, 2010, Final Office Action, p. 16, ll. 15-17).

With respect to the primary cited reference, Franken et al. merely discloses a system that rates “rerun programming in other than real time,” storing the rerun programming in separate smaller files for delivery in its entirety to the viewer, but does not actually disclose or imply segmenting each item of rerun programming (Abstract; col. 4, ll. 16-30; col. 5, ll. 20-28).

With respect to the secondary cited reference, Ziliacus merely discloses: “A method allows a user of a mobile terminal to participate in an interactive service relating to multimedia programming. A software application is stored in the mobile terminal. The software application is launched so that it is prepared to receive information concerning the interactive service from a server. Upon receipt of this information, the software application utilizes a stored user interface to prompt the user of the mobile terminal. The software application utilizes previous received

information concerning the user so that when the information is received, the user interface prompting the user is provided automatically and without the need for user approval.” Abstract; Fig. 6; Para. 27). Thus, the Zilliacus invention is actually a method for ranking programming by voting, but does not actually disclose or imply segmenting each item of rerun programming.

With respect to the tertiary cited reference, Taniguchi merely discloses: “In a video data transmitting method of sending in real-time video data being externally inputted, when encoding video data being inputted as stream data, start and stop of an encoding process is repeated at a predetermined time interval to carry out a data dividing process whereby a plurality of time-continuous video data are generated as partial video data. Also, metadata of partial video data is generated, which is sent, together with the partial video data, in real-time as partial video metadata.” (Abstract).

With respect to the quaternary cited reference, Peliotis merely discloses segmenting a video program by generating markers and tags to define each segment, but does not disclose or imply segmenting a video program and “establishing a quantifiable significance corresponding to the plurality of in-and-out points” by way of a “rating value” as a result of voter input within any given segment (Abstract; Fig. 1; Para. 23). Peliotis further discloses that the markers and tags are fed to the filter/comparator along with, but not as a result of, the user preferences (Fig. 2).

With respect to the quintenary cited reference, Lautzenheiser et al. merely discloses a method and apparatus for validating a survey database, but does not disclose or imply segmenting a video program by “establishing a quantifiable significance corresponding to the plurality of in-and-out points” by way of a “rating value” as a result of voter input within any given segment (Abstract; Figs. 41-46; Figs. 49-55; col. 29, l. 51 – col. 31, l. 7; col. 32, l. 61 – col. 34, l. 50).

In contrast to the cited art, the present invention generally involves the following salient features, *inter alia*: “receiving at least one string of content, the at least one string of content receiving step comprising *streaming the at least one string of content in real-time* for viewing while being captured; separating each at least one string of content into a plurality of segments,

each segment of the plurality of segments having a corresponding plurality of original in-and-out points; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment; ... receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment[.]” [Emphasis added.]

Further, the Applicants respectfully submit that the Examiner may have inadvertently engaged in impermissible hindsight reconstruction, especially in light of the inordinate number of references cited, **five** references, by using the Applicants’ invention in order to arrive at Claim 18.

Reiterating, the Examiner concedes that Franken et al. do not teach (1) separating each at least one string of content into a plurality of segments, (2) wherein each segment has a plurality of original in-and-out points and wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out within each segment, (3) a vote reflecting the quality of each segment of the content, is received on the content, thereby providing a rating value having a quantifiable significance to the in-and-out points, (4) the profile information is updated according to the vote, (5) identifying the content from multiple pieces of content, (6) identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content, (7) receiving a vote reflecting the quality of the content from a plurality of viewers, thereby providing rating value having a quantifiable significance to the in-and-out points, and (8) separating each at least one string of content into a plurality of original in-and-out points corresponding to each segment; (9) wherein each segment has a plurality of original in-and-out points, (10) wherein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment, and (11) checking for a number of viewers submitting a vote.

As such, **the Examiner concedes that the primary reference fails to disclose at least eleven of the claimed elements and limitations**, but cites the secondary reference, the tertiary reference, the quaternary reference, and the quinary reference for reconstructing the present invention. Yet Claim 18 recites a combination of elements and limitations that include features well beyond what even these **five** cited references may, at best, disclose.

As such, the Appellants respectfully submit that the cited art does not teach, suggest, motivate, or otherwise obviate, in any other manner, the combination of elements and limitations, *inter alia*, as recited in independent Claim 16 of the present application, some of the combined salient features being indicated in boldface:

16. A method of **interactively displaying and rating at least one string of content**, comprising the steps of:
 - identifying at least one string of content, the at least one string of content identifying step comprising **streaming the at least one string of content in real-time for viewing while being captured;**
 - separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;**
 - creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;**
 - showing the at least one string of content to a plurality of viewers;**
 - receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;**
 - determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote; and**
 - displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content. [Emphasis added.]**

Accordingly, Claim 18, subsuming the limitations of its base claim, i.e., Claim 16, by dependency is believed to, overcome the cited art.

In addition, the Appellants respectfully submit that the April 29, 2010, Final Office Action has not properly ascertained the differences between the prior art and the claims at issue or resolved the level of ordinary skill in the pertinent art. Reiterating, the Appellants recognize that an obviousness rejection may be proper in certain instances in light of *KSR v. Teleflex, Inc., et al.*, 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). However, *KSR v. Teleflex* specifically holds that the proper objective framework for such an obviousness inquiry is still set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), (*KSR International v. Teleflex, Inc. et al.*, Slip Op 04-1350 at 17): "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and *the level of ordinary skill in the pertinent art* resolved." [Emphasis added.]

Specifically, the Appellants respectfully submit that the Examiner has not properly ascertained the differences between the prior art and the claims at issue or resolved the level of ordinary skill in the pertinent art. For example, the Appellants note that a distinction between the primary reference, Franken et al., and presently claimed invention is that Franken et al. merely discloses a system that rates rerun programming in other than real time." However, the present application claims the following salient features, *inter alia*: "receiving at least one string of content, the at least one string of content receiving step comprising *streaming the at least one string of content in real-time* for viewing while being captured; separating each at least one string of content into a plurality of segments, *each segment of the plurality of segments having a corresponding plurality of original in-and-out points*; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, *the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment*; ... receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, *thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment*["].]" [Emphasis added.] The April 29, 2010, Final Office Action fails to explain how Franken et al.'s device may be modified to generate a plurality of new in-and-out points within a plurality of original in-and-out-points using a rating value, *inter alia*, i.e., ascertained the

differences between the prior art and the claims at issue.

As such, the Appellants respectfully submit that the Examiner fails to resolve the level of ordinary skill in the art and has failed to show any evidence in the form of enabling details that one of ordinary skill would modify Franken et al. to apply to “new in-and-out points” within “original in-and-out points,” as proposed in the April 29, 2010, Final Office Action, other than by a blanket statement. As such, the Appellants respectfully submit that the Examiner has not sustained the rejection of the claims on the basis of obviousness, even under *KSR v. Teleflex*.

Further, the Appellants respectfully submit that the rejection on this basis is actually grounded in impermissible hindsight reconstruction by piecing together the cited references (five) by using the Appellant’s claimed invention as a roadmap. The Examiner has merely made a blanket statement that one of ordinary skill would combine the teachings of Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), in view of Taniguchi (US 2003/0093810) and Peliotis (US 2002/0065678), and in further view of Lautzenheiser et al. (US 7054827), without presenting any evidence thereof.

The relevant procedural section is MPEP § 2142 which provides that “.... In view of all factual information, the examiner must then make a determination **whether the claimed invention “as a whole” would have been obvious at that time to that person. Knowledge of applicant’s disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the “differences,” conduct the search and evaluate the “subject matter as a whole” of the invention. The tendency to resort to “hindsight” based upon applicant’s disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.”** [Emphasis added.]

In the instant case, the Examiner has pieced together elements from five cited references to arrive at the invention as recited in Claim 18. Where a claimed limitation has not been expressly or implicitly disclosed, e.g., “receiving at least one string of content, the at least one string of content receiving step comprising *streaming the at least one string of content in real-*

time for viewing while being captured; separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment; ... receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment,” the Examiner merely makes a blanket statement that such limitation is “disclosed” without proffering any evidence thereof or rationale therefore.

In addition, the rule under MPEP § 707.07(g) provides for the avoidance of “Piecemeal Examination” as follows: “**Piecemeal examination should be avoided** as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, **avoiding, however, undue multiplication of references.** (See MPEP § 904.03.)” {Emphasis added.} In the instant case, the Examiner has used a multiplicity of references, e.g., five references, in asserting these grounds for rejection on this basis.

3. Conclusion as to Issue C

Thus, the Appellants respectfully submit that Claim 18 is believed to overcome these grounds for rejection. Therefore, the Appellants respectfully requests that these grounds for rejection on this basis are reversed and that Claim 18 is passed to allowance in due course.

- D. Whether the Examiner has erred, as a matter of law, in failing to consider and treat the present application, having more than three (3) actions and a pendency of more than five (5) years, as “special,” under MPEP §§ 707.02 and 708.01

Further, the Appellants respectfully submit that the present application has now been pending for over five years, i.e., **over six (6) years** as of the original filing date, **April 7, 2004**, of the present application. The relevant rules are as follows (MPEP §§ 707.02, 708.01):

707.02 Applications Up for Third Action and 5-Year Applications[R-2]

The supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying them.

The supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent Office Action with a view to finally concluding its prosecution.

Any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort should be made to terminate its prosecution.

In order to accomplish this result, the application is to be considered “special” by the examiner.

708.01 List of Special Cases [R-2]

37 CFR 1.102 Advancement of examination.

The following is a list of special cases (those which are advanced out of turn for examination):

(A) Applications wherein the inventions are deemed of peculiar importance to some branch of the public service and when for that reason the head of some department of the Government requests immediate action and the *>Director of the USPTO< so orders (37 CFR 1.102).

(B) Applications made special as a result of a petition. (See MPEP § 708.02.)

Subject alone to diligent prosecution by the applicant, an application for patent that has once been made special and advanced out of turn for examination by reason of a ruling made in that particular case (by the Director of the USPTO or a Commissioner) will continue to be special throughout its entire course of prosecution in the U.S. Patent and Trademark Office, including appeal, if any, to the Board of Patent Appeals and Interferences.

(C) Applications for reissues, particularly those involved in stayed litigation (37 CFR 1.176).

(D) Applications remanded by an appellate tribunal for further action.

(E) An application, once taken up for action by an examiner according to its effective filing date, should be treated as special by an examiner, art unit or Technology Center to which it may subsequently be transferred; exemplary situations include new cases transferred as the result of a telephone election and cases transferred as the result of a timely reply to any official action.

(F) Applications which appear to interfere with other applications previously considered and found to be allowable, or which will be placed in interference with an unexpired patent or patents.

(G) Applications ready for allowance, or ready for allowance except as to formal matters.

(H) Applications which are in condition for final rejection.

(I) Applications pending more than 5 years, including those which, by relation to a prior United States application, have an effective pendency of more than 5 years. See MPEP § 707.02.

(J) Reexamination proceedings, MPEP § 2261.

Thus, the Appellants respectfully submit that, since the present application has now received **six (6) actions** on the merit and has been **pending for over six (6) years** as of the original filing date of the present application, the present application should have been be treated as “special” by the Examiner under MPEP §§ 707.02 and 708.01 and that examination of the present application should have been, and should be, advanced. Therefore, the Appellants respectfully request that the grounds for rejection of Claims 1-28 on the foregoing bases are reversed and that remaining Claims 1-28 are passed to allowance in due course.

E. CONCLUSION

Accordingly, the Appellants respectfully submit that Claims 1-28, as contained in Appendix "A" (Claims Appendix), are believed to be patentably distinct over the cited references and that the Claims either stand alone or fall individually. Therefore, reconsideration of the present application in light of the foregoing argument and the evidence presented in the Appendices is respectfully requested. Claims 1-28, as amended on January 27, 2010, are believed to be fully supported by the originally filed specification and are believed to be in allowable form. In view of the foregoing arguments, the Appellants respectfully request that the rejections of the pending claims are REVERSED.

Respectfully submitted,

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VIII. Claims Appendix (Appendix A)

1. (previously presented) A method of interactively displaying and rating at least one string of content, comprising:

receiving at least one string of content, the at least one string of content receiving step comprising streaming the at least one string of content in real-time for viewing while being
5 captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-
10 out points within each segment;

showing the at least one string of content on at least one display device;

receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of
15 each at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and

updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value.

2. (previously presented) The method according to Claim 1, further comprising storing the profile information associated with the at least one string of content within a storage device.

3. (previously presented) The method according to Claim 1, further comprising capturing the at least one string of content with a content capturing device.

4. (previously presented) The method according to Claim 3, wherein the content capturing device is a video camera.

5. (previously presented) The method according to Claim 3, wherein the content capturing device is a digital camera.
6. (previously presented) The method according to Claim 3, wherein the content capturing device is an audio recorder.
7. (previously presented) The method according to Claim 1, further comprising the step of identifying the at least one string of content from the plurality of segments.
8. (previously presented) The method according to Claim 1, wherein receiving the at least one string of content occurs in real time relative to capturing the at least one string of content.
9. (previously presented) The method according to Claim 1, wherein the at least one string of content is video footage.
10. (previously presented) The method according to Claim 1, wherein the at least one string of content is a digital image.
11. (previously presented) The method according to Claim 1, wherein the at least one string of content is audio data.
12. (previously presented) The method according to Claim 1, wherein a rating value is determined for each segment of the plurality of segments of the at least one string of content based on the vote.
13. (previously presented) The method according to Claim 12, further comprising comparing the rating value with a predetermined value rating threshold.
14. (previously presented) The method according to Claim 13, further comprising selectively displaying a segment of the plurality of segments of the at least one string of content based on

comparing the rating value.

15. (previously presented) A system for interactively displaying and rating at least one string of content, comprising:

means for receiving at least one string of content, the at least one string of content streaming in real-time for viewing while being captured;

5 means for separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

means for creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of
10 new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

means for showing the at least one string of content on at least one display device;

means for receiving a vote on each segment of the plurality of segments of the at least one string of content, wherein the vote reflects the quality of each segment of the plurality of
15 segments of the at least one string of content, whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;
and

means for updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value.

16. (previously presented) A method of interactively displaying and rating at least one string of content, comprising the steps of:

identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being
5 captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of

segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content to a plurality of viewers;

receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;

determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote; and

displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content.

17. (previously presented) The method according to Claim 16, further comprising updating the profile information associated with each segment of the plurality of segments of the at least one string of content to reflect the rating value.

18. (previously presented) The method according to Claim 16, further comprising:

checking for a number of viewers submitting the vote; and

determining a rating value based on a plurality of votes received from the number of viewers.

19. (previously presented) The method according to Claim 18, further comprising comparing the rating value with a predetermined value rating threshold, wherein a segment of the plurality of segments of the at least one string of content is selected if the rating value is above the predetermined value rating threshold.

20. (previously presented) The method according to Claim 16, further comprising storing the profile information.

21. (previously presented) A device for interactively displaying and rating at least one string of content, comprising:

a content identification module for detecting at least one string of content and for separating the at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points, the at least one string of content streaming in real-time for viewing while being captured;

a storage module for storing the at least one string of content and a profile information, in a record, associated with each segment of the plurality of segments of the at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

an interface module for receiving the at least one string of content and transmitting the at least one string of content based on the profile information corresponding to each segment of the plurality of segments of the at least one string of content; and

a content rating module for receiving a rating value from a viewer for each segment of the plurality of segments of the at least one string of content, whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment, and for updating the profile information associated with each segment of the plurality of segments of the at least one string of content, wherein the rating value reflects the quality of each segment of the plurality of segments of the at least one string of content.

22. (previously presented) The system according to Claim 21, wherein the at least one string of content comprises an element selected from a group consisting of a video footage, digital image, and audio data.

23. (previously presented) The system according to Claim 21, further comprising a rendering module for formatting each segment of the plurality of segments of the at least one string of content to be displayed to the viewer.

24. (previously presented) The system according to Claim 21, further comprising a rendering module for selectively formatting each segment of the plurality of segments of the at least one string of content for display to the viewer based on the rating value associated with each segment of the plurality of segments of the at least one string of content.

25. (previously presented) A computer-readable medium having computer-executable instructions for performing a method comprising:

identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being
5 captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-
10 out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content to a plurality of viewers;

receiving a vote on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, wherein the vote reflects the quality of each
15 segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;

determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote; and

20 displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content.

26. (previously presented) The method according to Claim 1, further comprising the steps of:
storing the profile information associated with the at least one string of content within a
storage device;

5 capturing the at least one string of content with a content capturing device;
identifying the at least one string of content from the plurality of segments;
comparing the rating value with a predetermined value rating threshold; and
selectively displaying a segment of the plurality of segments of the at least one string of
content based on comparing the rating value,

10 wherein the content capturing device comprises an element selected from a group
consisting of a video camera, a digital camera, and an audio recorder,

wherein receiving the at least one string of content occurs in real time relative to
capturing the at least one string of content,

15 wherein the at least one string of content comprises an element selected from a group
consisting of video footage, a digital image, audio data, and

wherein a rating value is determined for each segment of the plurality of segments of the
at least one string of content based on the vote.

27. (previously presented) The method according to Claim 16, further comprising the steps
of:

updating the profile information associated with each segment of the plurality of
segments of the at least one string of content to reflect the rating value;

5 checking for a number of viewers submitting the vote;

determining a rating value based on a plurality of votes received from the number of
viewers;

comparing the rating value with a predetermined value rating threshold, wherein a
segment of the plurality of segments of the at least one string of content is selected if the rating
10 value is above the predetermined value rating threshold; and

storing the profile information.

28. (previously presented) The system according to Claim 21, further comprising:

a rendering module for formatting each segment of the plurality of segments of the at least one string of content to be displayed to the viewer; and

5 a rendering module for selectively formatting each segment of the plurality of segments of the at least one string of content for display to the viewer based on the rating value associated with each segment of the plurality of segments of the at least one string of content,

wherein the at least one string of content comprises an element selected from a group consisting of a video footage, digital image, and audio data.

IX. Evidence Appendix (Appendix B)

None

X. Related Proceedings Appendix

On information and belief, no decision by a court or the Board has been rendered in any related proceedings.